

Comments

A Chinese American Seat at the Table: Examining Race in the San Francisco Unified School District

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RRACE HAS ALWAYS BEEN a complicated issue in the K-12 education policy arena. While administrators and policy makers debate topics such as standardized testing, budgets and funding, curriculum development, and achievement gaps, issues concerning race are often forgotten. When race was discussed in the past, much of the discussion focused on the problem of racial segregation in public education.¹ Traditionally, American school districts desegregated following court mandates to do so. Today, many school districts have some measure of voluntary integration in place, even if it is not specifically required by law. Voluntary integration is based on the premise that a school district has chosen to address the issue of racial composition in schools, as opposed to the district desegregating under a court mandate, even if the district had previously been under court order to do so.² Recently, the United States Supreme Court constrained the methods by which school districts could voluntarily integrate by constitutional means.³

Given the current uncertainty surrounding voluntary integration, one question is how the San Francisco Unified School District ("SFUSD") will continue to address issues of race in K-12 education.

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1. This Comment focuses on "school" and "public education" as schooling for grades K-12. Discussion of topics such as university-level education and graduate school admissions, as well as affirmative action, are beyond its scope.

2. *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 127 S. Ct. 2738, 2747, 2749 (2007).

3. *Id.*

The current SFUSD voluntary integration plan seeks to achieve diversity without assigning students to schools on the basis of race or ethnicity.⁴ This Comment discusses the SFUSD plan in the context of Asian American⁵ issues, which are particularly relevant given the large numbers of Chinese American students enrolled in the district's schools.⁶

The SFUSD is an interesting case study due to the large Asian American presence in the district. Some commentators and families argue that the use of voluntary integration schemes negatively affects the lives of some Chinese American students by preventing them from attending their neighborhood schools.⁷ This unfairness has created a storm of identity politics,⁸ with Chinese Americans standing out as the central, singular identity group vocally protesting the district's current diversity index plan.

4. SFUSD, Education Placement: Student Assignment System, <http://portal.sfusd.edu/template/default.cfm?page=policy.placement.process> (last visited Oct. 29, 2007) [hereinafter SFUSD, Education Placement].

5. Following the lead provided in some examples of legal scholarship, I define Asian American as "Americans of Asian descent, including Asian Indian, Cambodian, Chinese, Filipino, Hmong, Japanese, Korean, Laotian, Taiwanese, Thai, and Vietnamese." Selena Dong, Note, *"Too Many Asians": The Challenge of Fighting Discrimination Against Asian-Americans and Preserving Affirmative Action*, 47 STAN. L. REV. 1027, 1027 n.2 (1995). Similarly, the term "minority" will be used in this Comment "to refer to racial minorities, including African-Americans, Asian-Americans, Pacific Islanders, Latinos, and Native Americans." *Id.* at 1028 n.3.

I personally identify as an Asian American of Chinese descent born in the United States. My parents are Cantonese-speaking immigrants from Guangdong, China, and Hong Kong. My thoughts in this Comment developed in part from the perspective of my generation and my family's immigrant history. Though I am not a San Francisco native, the city has become my home. This is where my narrative voice begins.

6. For example, the Chinese category filled 31.4% of SFUSD enrollment for the 2007-08 school year. SFUSD, STUDENT ENROLLMENT 1967-68 TO 2007-08: DISTRICT AND COUNTY TOTAL (GRADES K-12) (2008) [hereinafter SFUSD, STUDENT ENROLLMENT 1967-68 TO 2007-08], available at [http://sfportal.sfusd.edu/sites/research_public/rpa_docs/Student%20Enrollment/SFUSD%20Enrollment%201967-2007F%20\(01-30-2008\).pdf](http://sfportal.sfusd.edu/sites/research_public/rpa_docs/Student%20Enrollment/SFUSD%20Enrollment%201967-2007F%20(01-30-2008).pdf) (providing statistical data for percentage of district enrollment by racial group).

7. See, e.g., Julie D. Soo, *Back to School for Integration: Catch-22 of Excellence and Diversity Without Race*, ASIAN WK., Aug. 26, 2006, available at http://news.newamericamedia.org/news/view_article.html?article_id=0b132aaf51dd1f6e6a877f8335b4aa8f; Joan Walsh, *John Zhao's Crusade*, S.F. MAG., Sept. 2003, <http://www.sanfranmag.com/story/john-zhaos-crusade>.

8. Identity politics is defined as "discourse and social activism grounded in gender, race, class, religion, sexual orientation, nationality, or other fixed, often singular identities." Jill M. Bystydzienski & Steven P. Schacht, *Introduction to FORGING RADICAL ALLIANCES ACROSS DIFFERENCE: COALITION POLITICS FOR THE NEW MILLENNIUM 1*, 3 (Jill M. Bystydzienski & Steven P. Schacht eds., 2001).

When an identity group seeks to rectify an injustice, one option is to pursue a remedy through litigation. Another option is to engage in broader coalition building with other identity groups around a social issue and "across difference."⁹ Generally, a coalition is a form of "working together."¹⁰ A traditional approach in coalition building involves "collective, allied action in terms of structural opportunities, leadership, and ideological and organizational networks" to form connections between groups.¹¹ Recently, different identity groups have gone a step further by combining efforts instead of simply linking singular identity-based social movements.¹²

Coalition building is not always straightforward or immediately effective, which may lead some scholars to reject the strategy as a viable method of addressing Asian American issues within society.¹³ Tension may exist between Asian American social activists and those who work on behalf of other identity groups because of unfamiliarity or misunderstanding. The tension is compounded by the simple fact that much of the serious race-based discrimination currently faced by Asian Americans is unknown to American society or is simply unacknowledged.¹⁴ The model minority myth, a perception held by mainstream society that "Asians are all doing well" and therefore do not face any discrimination based on race,¹⁵ has in effect prevented Asian Americans from taking a seat at the table in larger conversations

9. *Id.* at 1 ("As we [move into the future] scholars and activists concerned with social change are increasingly recognizing that in order to transform society in the pursuit of social justice, effective coalitions across difference must be created and maintained.").

10. Angela Y. Davis & Elizabeth Martínez, *Coalition Building Among People of Color*, 7 INSCRIPTIONS 42 (1994) (providing a printed version of their discussion on the topic with students, staff, and community members at the University of California, San Diego, in 1993).

11. Bystydzienski & Schacht, *supra* note 8, at 1.

12. *Id.* at 1-6.

13. See generally Elbert Lin, *Identifying Asian America*, 33 SW. U. L. REV. 217 (2004).

14. Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CAL. L. REV. 1241, 1247, 1258-65 (1993); Lin, *supra* note 13, at 218.

15. FRANK H. WU, *YELLOW: RACE IN AMERICA BEYOND BLACK AND WHITE* 18 (2002). The model minority myth, as the term is used in this Comment, is the general sentiment that Asian Americans do not need any considerations made based on our race because we are already doing well. *Id.* The myth also generalizes Asian Americans as "hardworking, intelligent, and successful" when that is not always the complete picture. ROBERT S. CHANG, *DISORIENTED: ASIAN AMERICANS, LAW, AND THE NATION-STATE* 53-55 (1999) (internal citation omitted). While these laudatory adjectives seem positive, they also mask or perpetuate discrimination because they enable society to ignore any ongoing discrimination. *Id.* Instead of widespread success, there are wide disparities within the Asian American group in socioeconomic class, income, education level, and English-language ability. See Vanessa Hua, *Big Income Divide Among Asian Pacific Islanders; Many Thriving, Others Impoverished, Study Finds*,

about racism in our society. In reality, much of the ongoing racial discrimination faced by the group is more subtle, but no less pervasive. For example, Asian Americans are more likely to encounter a glass ceiling in the workplace in part due to societal stereotypes about the group's ability to succeed in leadership roles and management positions.¹⁶ Research also reveals that many mainstream Americans hold an implicit belief that Asian Americans are somehow "not 'American.'"¹⁷ Most disturbingly, these negative perceptions of the group have led to thousands of documented incidents of anti-Asian American violence in the twenty-first century.¹⁸ Regardless of how the group has been portrayed as the successful model minority, Asian Americans still face a number of challenges stemming from racism in the United States. However, this Comment attempts to look beyond the mere effects of discrimination experienced by the group, and instead grapples with underlying causes.¹⁹

As the ongoing discrimination faced by Asian Americans remains generally unacknowledged, both in mainstream American society and in traditional legal scholarship, the group must carefully consider its voice in public policy debates. One as-yet unanswered question is whether coalition building can be an effective method of social change for Asian Americans in the context of K-12 public education reform.

This Comment is a case study, examining the collective experience of Chinese American students with the SFUSD and its current

S.F. CHRON., Mar. 4, 2005, at B5. The myth also hides the struggles of some Asian American ethnic groups behind the success of more well-known groups. *Id.*

16. Brief for the Asian American Justice Center et al. as Amici Curiae Supporting Respondents at 6–7, *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No 1*, 127 S. Ct. 2738 (2007) (Nos. 05-908, 05-915).

17. *Id.* at 8. One study referenced by amici provided "empirical evidence of implicit beliefs that Asian Americans are not 'American.'" *Id.* In addition, amici noted that a survey conducted by one Chinese American national organization "revealed that 71% of adult respondents either held decisively negative or partially negative attitudes towards Asian Americans." *Id.* These results help to reveal the true picture—that Asian Americans do currently face racial discrimination in the United States, regardless of what contrary perceptions may have been nurtured by the model minority myth. Further, government officials and the judiciary have often failed to recognize these contemporary issues. See Chang, *supra* note 14, at 1259, 1261–62.

18. Brief for the Asian American Justice Center et al. as Amici Curiae Supporting Respondents, *supra* note 16, at 8.

19. See MARTIN LUTHER KING, JR., *WHY WE CAN'T WAIT* 78 (1964). When responding to critics who deplored his judgment in calling for only nonviolent resistance in Birmingham, Alabama, related to integration efforts, Dr. King wrote in his *Letter from Birmingham Jail*, "I am sure that each of you would want to go beyond the superficial social analyst who looks merely at effects, and does not grapple with underlying causes." *Id.*

diversity index plan. The Comment considers the future face of the public school system in San Francisco as legal and social interests merge.²⁰ Part I provides the legal context for the SFUSD's voluntary integration initiatives through an overview of litigation coming from the district, as well as a brief review of general litigation on the issue of race in public schools. Part II lays out the rules of the SFUSD diversity index plan and considers the plan's potential to effectively create social change. Next, Part III discusses the interests of the Chinese American community in San Francisco through the lens of Critical Race Theory²¹ ("CRT") and specifically AsianCrit,²² and looks at the levers for change available to the group. Part IV considers whether, from a Chinese American perspective, identity group litigation or coalition building would be more effective in future education reform, particularly in efforts to advocate for a return to neighborhood schools. There are benefits and limits to both identity-focused litigation and broader coalition building. Given the unique discrimination faced by Asian Americans today, including perceptions of the group colored by the model minority myth, some propose identity-based litigation as the more desirable option. This Comment, however, argues that given the divisive effects of litigation and the greater interests of the general community, Chinese Americans should instead work toward coalition building with other interest groups on education reform.

20. The premise of my approach is to consider how the interests of the Chinese American group interact with the legal framework for voluntary integration and the interests of the SFUSD community.

21. Critical Race Theory is a growing body of legal scholarship developed by left scholars, many of them scholars of color situated in law schools, "whose work challenges the ways in which race and racial power are constructed and represented in American legal culture and, more generally, in American society as a whole." KIMBERLÉ CRENSHAW ET AL., *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* xiii (1995).

22. "AsianCrit" or "asianCrit" is a term referring to CRT scholarship written by Asian American scholars. See Lin, *supra* note 13, at 218. I draw upon ideas from AsianCrit because I consider it an appropriate grounding of a discussion on how a school district's voluntary integration plan might affect Chinese Americans. I recognize that there is a range of difference within the Asian American group, and even within Chinese Americans as a group. However, a broader analytical approach will necessarily generalize in order to start conversations.

I. Legal Context for the San Francisco Unified School District's Diversity Efforts

A. Overview of Desegregation Cases in the United States

The history of school desegregation in the United States is a complicated one.²³ In the seminal case of *Brown v. Board of Education of Topeka*,²⁴ the United States Supreme Court declared that school segregation on the basis of race is unconstitutional.²⁵ In *Brown*, the Court considered the systemic practice of relegating African American children to "separate but equal" schools, which kept them separate from white children.²⁶ In the pre-*Brown* era, states mandated segregation and school districts enforced it—segregation was an openly perpetuated state action.²⁷ In coming to its historic opinion, the Court considered the line of cases that preceded *Brown*,²⁸ including *Gong Lum v. Rice*,²⁹ a 1927 case in which a Chinese-born father sued the school district to have his American-born daughter admitted to the school for white children.³⁰ The Court held in *Gong Lum* that requiring a child of Chinese descent to attend separate schools for colored children was constitutional.³¹ After the Court decided *Brown*, some school districts

23. It would be impossible to provide a complete overview of desegregation and voluntary integration in American public schools here. See discussion in this Part for a brief overview of particularly relevant United States Supreme Court cases.

24. 347 U.S. 483 (1954).

25. *Id.* at 493. For a detailed history of the *Brown* case, see RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA'S STRUGGLE FOR EQUALITY* (1975).

26. 347 U.S. at 487.

27. *See id.*

28. *Id.* at 488–92 (citing *Plessy v. Ferguson*, 163 U.S. 537 (1896) (upholding the "separate but equal" doctrine in the transportation arena), then citing a line of earlier education cases, including *Cumming v. Richmond County Bd. of Educ.*, 175 U.S. 528 (1899) (declining to interfere with states' allocation of taxpayer monies to schools for non-white children), *Gong Lum v. Rice*, 275 U.S. 78 (1927) (holding that children of Chinese descent could be required to attend schools for colored children instead of schools for white children), *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938) (holding that African American applicants could not be denied admittance to the state's law school if no separate facility was available for their legal training), *Sipuel v. Oklahoma*, 332 U.S. 631 (1948) (holding that African American students must be admitted to the state's law school if no other legal education was available), *Sweatt v. Painter*, 339 U.S. 629 (1950) (holding that African American students must be admitted to the state's law school for white students if the separate facility for them did not provide the equivalent legal education), and *McLaurin v. Okla. State Regents*, 339 U.S. 637 (1950) (considering the constitutionality of separating graduate students by race)).

29. 275 U.S. 78 (1927).

30. *Id.* at 79–80. This is one earlier example of a Chinese parent asking the courts to address his daughter's elementary school placement.

31. *Id.* at 87.

went under court order to dismantle their segregated schools. Litigation continued as some districts opposed the order to desegregate or made inadequate efforts to do so.³²

1. Desegregation Litigation in the SFUSD

In San Francisco, desegregation activists filed a class action racial discrimination suit against the SFUSD in 1978.³³ In 1983, the United States District Court for the Northern District of California approved a consent decree, mandating that no racial group could be a majority in any SFUSD school.³⁴ The consent decree included the establishment of a monitoring team to update the court on the SFUSD's progress in adhering to the court's mandate. When the consent decree caps resulted in higher admissions standards to Lowell High School for Chinese American students than for any other group, their families sued the SFUSD in *Ho v. San Francisco Unified School District*.³⁵ After the *Ho* settlement, the SFUSD could no longer use race as a factor in admissions criteria to any of the city's schools.³⁶ The district's current diversity index plan began in 2001.³⁷

B. The United States Supreme Court's Position in *Parents Involved* Leaves Limited Options Open to School Districts Interested in Racial Integration Initiatives

In 2007, the United States Supreme Court again faced the issue of race in public schools in *Parents Involved in Community Schools v. Seattle School District No. 1*.³⁸ The Court considered the constitutionality of voluntary integration plans in the Seattle, Washington, and Jefferson County, Kentucky, K-12 school districts.³⁹ In a four-Justice plurality plus the concurring vote of Justice Kennedy, the Court held that the particular use of race in both school districts' plans was not narrowly tailored enough to survive a strict scrutiny analysis.⁴⁰ Justice

32. See, e.g., *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971) (considering the place of busing in the district's desegregation efforts); *Green v. County Sch. Bd.*, 391 U.S. 430 (1968) (requiring a school board to take more meaningful steps toward dismantling the system of segregation perpetuated by the district).

33. *Soo*, *supra* note 7.

34. *Id.*

35. 965 F. Supp. 1316 (N.D. Cal. 1997).

36. *Soo*, *supra* note 7 (noting that the SFUSD had to find race-neutral alternatives for its student assignment plan).

37. *Id.*

38. 127 S. Ct. 2738 (2007).

39. *Id.*

40. *Id.* at 2760–61.

Kennedy's concurring opinion is particularly relevant because it provides the governing rule of the case. His concurring opinion also includes insight into where the Court currently stands on the issue of race in K-12 public education.⁴¹

The Seattle school assignment plan was a choice-based system that allowed incoming ninth graders to rank any of the district's high schools by order of preference.⁴² Several of the schools were more popular, attracting more first choice applicants than available seats, which led to the use of tiebreakers.⁴³ After considering whether an applicant's sibling was already enrolled, the next tiebreaker was race.⁴⁴ If the racial composition of the oversubscribed school was not within ten percentage points of the district's overall white/nonwhite balance, called "integration positive," then the tiebreaker was between which student's race would bring the school's composition toward integration positive.⁴⁵ If a tiebreaker was needed after that point, the district would consider the geographic proximity of the school to each student's residence.⁴⁶ The Jefferson County plan similarly looked at the black/other composition of a school compared to the district-wide ratio—under the plan, no student would be assigned to an oversubscribed school if his or her race would exacerbate an already disproportionate ratio.⁴⁷

The *Parents Involved* opinion is a lengthy one that ties in knots the previous public school cases that have come before it.⁴⁸ The plurality considered colorblindness as the ideal system for school assignment. Chief Justice Roberts even ends the plurality opinion by philosophizing, "The way to stop discrimination on the basis of race is to stop discriminating on the basis of race."⁴⁹ Justice Thomas notes in his concurring opinion that:

[R]acial imbalance is not segregation. Although presently observed racial imbalance might result from past *de jure* segregation, racial

41. James E. Ryan, *The Supreme Court and Voluntary Integration*, 121 HARV. L. REV. 131, 133 (2007) (noting that Justice Kennedy's lone opinion is effectively controlling as to whether racial integration is still an option for interested school districts).

42. 127 S. Ct. at 2746–47.

43. *Id.* at 2747.

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.* at 2749–50.

48. This Comment does not address the reasoning of the *Parents Involved* plurality, concurring, and dissenting opinions, because to do so would be to write a separate case note. For one recent critique of *Parents Involved*, see Ryan, *supra* note 41.

49. 127 S. Ct. at 2768.

imbalance can also result from any number of innocent private decisions, including voluntary housing choices. . . . Because racial imbalance is not inevitably linked to unconstitutional segregation, it is not unconstitutional in and of itself.⁵⁰

The Court seems to underscore deliberate, *Brown*-era segregation as the only type of segregation which warrants a corrective action, and eliminates the possibility of "racial imbalance without intentional state action to separate the races" as segregation.⁵¹

Proponents of the Seattle and Jefferson County plans, however, arguably would have sought meaningful integration as the ideal goal for a school district. Since the Court decided *Parents Involved*, the question has become: What role, if any, does integration play in the future of public school reform? Justice Kennedy has answered this question for the Court, at least for the moment. He mildly concludes his concurring opinion in *Parents Involved* by inviting "school districts [to continue] the important work of bringing together students of different racial, ethnic, and economic backgrounds."⁵² However, he seems to place the burden of achieving integration on "experts, parents, administrators, and other concerned citizens to find a way to achieve the compelling interests they face without resorting to widespread governmental allocation of benefits and burdens on the basis of racial classifications."⁵³

Justice Kennedy would only allow consideration of an individual student's race if race-neutral alternatives were tested and found unsuccessful.⁵⁴ Some commentators note that school districts can be confident that race-neutral steps to achieve integration are permissible, and that race-conscious measures can be employed if those race-neutral steps are ineffective.⁵⁵ However, it is unclear from the Court's decision, and specifically from the dicta in Justice Kennedy's opinion, when a school district can be sure that its race-neutral efforts have been exhaustive enough to justify explicit use of race to achieve integration. Commentators caution that school districts may shy away from integration as a goal altogether.⁵⁶ If school districts do continue to see racial integration as a goal, they will have to use increasingly race-neutral means to achieve it. San Francisco's current voluntary in-

50. *Id.* at 2769 (Thomas, J., concurring) (footnote omitted).

51. *Id.* at 2769–70.

52. *Id.* at 2797 (Kennedy, J., concurring).

53. *Id.*

54. Ryan, *supra* note 41, at 136.

55. *Id.* at 138.

56. *Id.* at 156.

tegration plan, which is explicitly race-neutral, may be used as a model in the aftermath of *Parents Involved*. If school districts attempt to craft voluntary integration programs similar to the SFUSD plan, they must consider the impact across their districts. Otherwise, the burden may fall on identity groups such as the Chinese American students in San Francisco and lead to antagonism between different interest groups.

II. Discussion of the San Francisco Unified School District

As a city, San Francisco has been aware of racial issues, including in its public school system, for many years. The school district has a history of education reform through administrative fixes as well as by use of the courts as a lever for change. On an individual level, politicians, administrators, teachers, students, and the city's residents are aware of race as an issue in schools. One teacher at Thurgood Marshall High School⁵⁷ in San Francisco noted, "You lose kids when they don't have a community in the classroom . . . They notice race. It's huge."⁵⁸

With an ever-increasing number of Chinese American faces populating SFUSD classrooms, the district's discussions concerning race must necessarily shift away from the black-white disparities addressed in the school desegregation cases. Instead, we must have a conversation grounded in greater familiarity among identity groups. To have this conversation, Chinese Americans must be included at the table—and we must ask for a seat if one is not offered.

57. In October 2007, the district reported that 20.6% of Thurgood Marshall High School students were identified as African American. SFUSD, SCHOOL SITE LIST AND SUMMARY 4 (revised Oct. 3, 2007) [hereinafter SFUSD, SCHOOL SITE LIST], http://sfportal.sfusd.edu/sites/research_public/rpa_docs/Student%20Enrollment/Student%20Enrollment—SFUSD%20School%20Site%20List%20Summary-Fall%20Semester%201997-2007f.pdf. The percentage of African American students at Marshall was significantly higher than the district-wide percentage of 12.8% for the 2007–08 school year. SFUSD, STUDENT ENROLLMENT 1967–68 TO 2007–08, *supra* note 6.

58. David Gelles, U.C. Berkeley Graduate School of Journalism, Thurgood Marshall's Identity Crisis, Profile: Bayview-Hunters Point (Dec. 2006), http://www.journalism.berkeley.edu/ngno/reports/bayview/bvhp_2_1206.html (providing a teacher's description of the struggles of African American students at Thurgood Marshall High School even while overall achievement was rising). "Educators have long understood that high achieving minority students do better if other high achievers of their own race surround them." *Id.*

A. A Snapshot of San Francisco Shows the City's Challenges When Attempting to Consider Race in SFUSD Schools

The SFUSD has a diverse set of demographics. For the 2007–08 school year, the district reported total enrollment was 23.0% Latino, 12.8% African American, 31.4% Chinese, and 9.8% Other White.⁵⁹ The district is highly dissimilar to districts that predominantly enroll only African American and white students, such as Jefferson County, Kentucky, in *Parents Involved*.⁶⁰ Demographers predict that the Latino and Chinese populations will continue to grow in San Francisco, while numbers of whites and African Americans decline.⁶¹ The SFUSD will need to consider that reality as it plans for the future.

Since Chinese Americans, not African Americans or whites, are the statistically dominant group in the district's enrollment, they are in the unique position of being a minority group in a position of majority.⁶² As much of the traditional race-based litigation focused on the tension between whites and either African Americans or Latinos, San Francisco may have difficulty in finding precedent where Chinese Americans are in the role traditionally filled by whites. Though this situation may include principles similar to other desegregation cases, the unique discrimination faced by Asian Americans in American society⁶³ requires an analysis that is more specific to the group's needs. In addition, many Chinese American families live in the west-side neighborhoods of San Francisco, the Richmond and Sunset neighborhoods, where several of the popular high schools are located.⁶⁴ It is understandable that they would prefer their children to attend the well-reputed schools in their own neighborhood. In crafting its integration scheme, the SFUSD had to consider these social and geographic factors.

59. SFUSD, STUDENT ENROLLMENT 1967–68 TO 2007–08, *supra* note 6 (including percentages of Filipino, Japanese, Korean, Other Non-White students, as well as those declining to state a racial category).

60. *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 127 S. Ct. 2738, 2749–50 (2007).

61. Soo, *supra* note 7.

62. See *id.* (discussing the role of Chinese Americans in San Francisco's minority-majority population).

63. See *supra* notes 14–18 and accompanying text.

64. See Walsh, *supra* note 7 (describing the concerns of west-side San Franciscans who wanted their children to attend schools in the neighborhood). The popular Lowell, Lincoln, and Washington high schools are all located on the western side of the city.

The Bayview-Hunters Point neighborhood,⁶⁵ located in the southeast corner of San Francisco, is one of the areas where the district assigned some displaced Chinese American students. The neighborhood has declined in vitality in recent years as members of the African American middle class left the city in great numbers.⁶⁶ Thurgood Marshall High School⁶⁷ ("Marshall"), located in the neighborhood, serves many of the students living there, as it has done since its opening. African-American enrollment at the school has declined, while Asian American enrollment has risen.⁶⁸ Marshall is not currently a "school of choice" in the district for eighth graders ranking their choices for high school placement, as Lincoln and Washington are, though it would like to eventually be that popular.⁶⁹

A number of Chinese American families were displeased when their children could not attend neighborhood schools in predominantly Asian districts and had to travel to schools in other areas of the city.⁷⁰ If Bayview-Hunters Point families were to protest the district policy requiring their children to attend school outside the neighborhood instead of at Marshall, would public opinion be more sympathetic? I suggest that society's reaction to their anger would be more widely accepted and understood.⁷¹ The model minority myth perpetu-

65. In 2007, the Bayview district was considered "predominantly black." Leslie Fulbright, *S.F. Moves to Stem African American Exodus; Critics Say Effort to Reverse Longtime Trend May Be Too Late*, S.F. CHRON., Apr. 9, 2007, at A1. According to 2000 census data, Bayview-Hunter's Point was 46.9% African American; 28% Asian and Pacific Islander; 4.9% white; and 16.4% Hispanic of any race. *Id.* Many analysts believe that the neighborhood's black population has declined in recent years, but more current data specific to the Bayview district was not available. *Id.* For the 2000–01 school year, the district reported that 27.7% of Marshall students were identified as African American. SFUSD, SCHOOL SITE LIST, *supra* note 57, at 45 (Oct. 2000). There was a statistical drop of about 7% by 2007. *See id.* at 6.

66. In 2007, one community member, an African American living in San Francisco, lamented that "San Francisco no longer has a viable black community. . . . The middle class is gone, and what we have left is underprivileged, uneducated, poor black folks." Fulbright, *supra* note 65.

67. A Thurgood Marshall High School teacher noted that when the school opened in 1994, its mission was to "serve the African-American community and make them college-ready." Gelles, *supra* note 58.

68. *Id.* "Five years ago, blacks made up 30 percent of the student body, with Asians representing about 40 percent. Today, Asians make up 55 percent of the student body, with blacks representing only 22 percent." *Id.* In part, this change is due to Asian Americans moving into Bayview-Hunters Point as African Americans move out. *Id.*

69. *Id.* (quoting Principal Cheng of Thurgood Marshall High School who stated in 2006 that he would like the school to eventually have a waiting list, which would indicate that it is a school of choice).

70. *See supra* note 7 and accompanying text. For discussion, see *infra* Part II.C.

71. *See* CHANG, *supra* note 15, at 55. Chang draws upon a similar situation, during which a group of Ethnic Literature students expressed their surprise and anger after read-

ates a perception that Asian American students are all doing fine in school and should not have any complaints.⁷² Thus, public opinion regarding Chinese Americans who advocate for a change in the city's voluntary integration efforts can often be negative. In order to consider how Chinese American students fit into the district's diversity initiatives, an overview of the current plan follows.

B. How the Current SFUSD School Assignment System Works

The Board of Education, made up of seven members elected from across the city for four year terms, determines all aspects of school policy in the district, including the school assignment system.⁷³ The school assignment process generally occurs at three stages of K-12 education: kindergarten, sixth-grade (middle school), and ninth-grade (high school).⁷⁴ Parents are asked to rank up to seven choices for their children within the SFUSD, and then wait for the district to make assignments, generally from those listed choices.⁷⁵ The SFUSD expressly states that race and ethnicity are not used to assign students to schools.⁷⁶ Instead,

Whether students receive one of their school choices depends on a range of factors, including the number of seats available at the schools chosen, the number of students requesting those seats, the number of siblings who get pre-assigned, the ranking of the choices, the diversity of the applicant pools for the schools listed and, in some instances, the application of the Student Assignment System.⁷⁷

The student assignment system was designed to comply with the 1999 settlement in *Ho v. San Francisco Unified School District*,⁷⁸ which

ing works by outspoken Asian American writers. *Id.* The angry students explained that their reaction was in part due to the "militancy" communicated in the Asian American works, when they had not been aware of any reason why the writers would feel that way. *Id.* They noted that works by writers from groups more traditionally imaged as oppressed did not provoke such a reaction because they knew and acknowledged those groups' experiences with discrimination. *See id.*

72. *See supra* note 15 and accompanying text (defining the model minority myth).

73. SFUSD, Board of Education – Overview (SFUSD), http://portal.sfusd.edu/template/default.cfm?page=board.overview_more (last visited Oct. 29, 2007). "The Board of Education is responsible for establishing educational goals and standards, approving curriculum, the School District budget (independent of the City's budget), confirming appointment of all personnel, approving purchases of equipment, supplies, services, leases, renovation, construction, and union contracts." *Id.*

74. SFUSD, Education Placement, *supra* note 4.

75. *Id.*

76. *Id.*

77. *Id.*

78. 965 F. Supp. 1316 (N.D. Cal. 1997).

forbade the use of race in school assignments.⁷⁹ The *Ho* case was brought by Chinese American families who sued when their children were kept out of their preferred schools simply because of their ethnicity.⁸⁰ Following *Ho*, the SFUSD had to find a way to achieve diversity in compliance with court-ordered desegregation from the 1970s, without expressly using race or ethnicity.⁸¹ The resulting plan focused on a number of diversity factors.

The current SFUSD school assignment uses five factors and accompanying questions to create a diversity index: (1) extreme poverty,⁸² (2) socioeconomic status,⁸³ (3) home language,⁸⁴ (4) academic performance rank of sending school,⁸⁵ and (5) academic achievement status.⁸⁶ Based on these five factors, the district develops student profiles.⁸⁷ When there are more requests than seats available at a particular program, the district compiles a "base profile" of the program by averaging the profiles of pre-assigned students, those siblings of current enrollees or children assigned to special programs, who can bypass the lottery process.⁸⁸ The district first considers whether siblings of the applicant are already attending the chosen school site, using that preference as an initial tiebreaker.⁸⁹ Requests are then separated into students living in the attendance area and those who are outside the attendance area.⁹⁰ The student whose individual profile is most different from the base profile is then assigned to the pro-

79. Leslie Fulbright & Heather Knight, *With More Choice Has Come Resegregation: Board's Challenge: Reconcile Imbalance with Least Parental Uproar*, S.F. CHRON., May 29, 2006, at A1, A12.

80. *Id.* at A12.

81. *Id.*

82. SFUSD, Education Placement, *supra* note 4 (asking whether the student lives in public housing, or with a foster family, or participates in a homeless program).

83. *Id.* (considering whether the student participates in programs such as free/reduced lunch, CalWORKS, or public housing).

84. *Id.* (asking whether or not English is the student's home language).

85. *Id.* (considering the academic performance index ranking of the student's current school, as determined by the California Department of Education).

86. *Id.* (considering whether students entering kindergarten attended preschool and noting the standardized test score percentile of students entering grades 1–12).

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.* Attendance area refers to a designated geographic boundary surrounding a single school site in the SFUSD. For a visual representation of attendance areas at the elementary, middle, and high school levels, visit the SFUSD website at <http://www.sfusd.k12.ca.us/dept/epc/EPC-street2.html> (last visited Feb. 24, 2008). Students living outside of the attendance area are not considered until the system determines that none of the remaining students from the attendance area would impact the diversity of the base profile. SFUSD, Education Placement, *supra* note 4.

gram⁹¹—this is the key step in achieving greater diversity. The process gradually continues and the district recalculates the base profile to account for new additions, until all seats have been assigned.⁹²

C. Effects and Effectiveness of the SFUSD School Assignment Plan

When the diversity index plan was first implemented by the Board of Education in 2002, families and commentators alike were optimistic about it.⁹³ The plan was touted as “a way to promote integration without assigning children to schools by race,”⁹⁴ and “what could be the future of American desegregation.”⁹⁵ On paper, the plan was promising. It looked to address socioeconomic inequality and create racially integrated school populations, without blatantly stirring up resentment among parents.⁹⁶

The plan is premised on the idea that communities should be “‘supportive of economic integration [because it will result in] a by-product, some measure of racial integration as well . . . given the association between race and class.’”⁹⁷ It is also a “[reflection of the] growing belief that income is a stronger predictor of academic achievement than race.”⁹⁸ At the time when the plan was first implemented by the SFUSD, Chinese American and white students were “typically overrepresented” at the city’s best schools, while the worst schools had higher concentrations of Black and Latino students.⁹⁹ However, critics of the plan warned that that the strategy was actually a weak alternative to racial integration.¹⁰⁰ One commentator cautioned, “‘The only reason many districts are pursuing [socioeconomic integration rather than racial integration] is because the courts are becoming so reactionary about enforcing desegregation plans.’”¹⁰¹

91. SFUSD, Education Placement, *supra* note 4.

92. *Id.*

93. Michael A. Fletcher, *Diversity's Future?: Socioeconomic Criteria, Not Race, Used to Desegregate San Francisco Schools*, WASH. POST, Mar. 18, 2002, at A1.

94. *Id.*

95. *Id.*

96. *Id.* (“Officials turned to socioeconomics in the hope of balancing the glaring inequities among the city’s 112 public schools without stoking the resentment often prompted by racially based desegregation plans.”).

97. *Id.* (quoting Richard D. Kahlenberg, senior fellow at the Century Foundation, a New York-based research organization).

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.* (quoting Gary Orfield, professor of education and social policy at Harvard University’s Graduate School of Education).

Recent commentary suggests that while parental choice has certainly increased, “[the system] has also resegregated dozens of schools, especially in poor neighborhoods.”¹⁰² The SFUSD and the monitoring court (immediately before the consent decree ended in 2005) were aware of the resegregation of popular schools in the district.¹⁰³ Specifically, the monitoring team cautioned that the “two most popular comprehensive high schools in the city, Lincoln and Washington, are both severely resegregated at one or more grade levels,” warning that they considered this resegregation to be directly related to the disparities in academic achievement for other groups in the district.¹⁰⁴

Lincoln High School (Sunset neighborhood) and Washington High School (Richmond neighborhood) have high numbers of Chinese American students.¹⁰⁵ During the fall of 2007, 51.1% of enrolled students at Lincoln were identified as Chinese,¹⁰⁶ compared to 7% of the students identified as African American.¹⁰⁷ Washington had similar percentages.¹⁰⁸ During the past few years, the percentage of students identified as Chinese has stayed between 30.3% and 31.4%,¹⁰⁹ which is fairly stable. These predominantly Chinese American-populated schools in the district were pointed out to the monitoring court as examples of how integration efforts through the diversity index plan were failing.¹¹⁰ In fact, the demographics of Lincoln and Wash-

102. Fulbright & Knight, *supra* note 79, at A12; Final Supplemental Report of Consent Decree Monitor Regarding Desegregation and Academic Achievement at 3–5, S.F. NAACP v. S.F. Unified Sch. Dist., No. C-78 1445 WHA (N.D. Cal. Dec. 28, 2005) [hereinafter Final Supplemental Report], available at <http://www.gseis.ucla.edu/courses/edlaw/Final%20SF%20Supp%20Rept.pdf> (providing the final report of Stuart Biegel, Consent Decree Monitor, to the federal district court on the consent decree and desegregation efforts following district litigation).

103. See generally Final Supplemental Report, *supra* note 102.

104. *Id.* at 5.

105. The SFUSD website allows the public to see the demographics of each school, including the racial composition. Visit SFUSD, School Directory, http://portal.sfusd.edu/template/default.cfm?page=school_info.profiles (last visited Feb. 12, 2008).

106. SFUSD, SCHOOL SITE LIST, *supra* note 57, at 4 (providing ethnic representation of SFUSD students by school each fall for a number of years).

107. *Id.*

108. *Id.*

109. SFUSD, STUDENT ENROLLMENT 1967–68 TO 2007–08, *supra* note 6. Note that during the 1967–68 school year, the Chinese student enrollment in the SFUSD was at 13.5%. *Id.* Since that year, the number has gradually risen to its current level. See *id.* During the same period, “Other White” enrollment has fallen from 41.0% to 9.8%, illustrating the decline in numbers of white children attending public schools in San Francisco. See *id.*

110. Final Supplemental Report, *supra* note 102, at 4–5.

ington were reported as "severely resegregated."¹¹¹ These examples of resegregation, among others, were referred to as "corrosive and widespread"¹¹² in a report to the monitoring court. Many of the resegregation examples given in the report are specifically related to Chinese American populations at especially-popular schools. Thus, resegregation in the SFUSD means that there are increasing numbers of Chinese American students at specific schools. This fact alone understates the unique situation faced by the SFUSD in its voluntary integration efforts, separating the district from most other areas in the country where the majority group is either whites or African Americans. The monitoring team's report noted that the resegregation was directly related to the achievement gap faced by African American students in the district.¹¹³ However, the monitoring team did not mention the changing demographics of San Francisco, which includes growing numbers of Chinese Americans and declining numbers of African Americans,¹¹⁴ which makes it more difficult to create a complete balance among represented identity groups in every neighborhood, and at every school.

Though resegregation may be continuing in some schools, a number of Chinese American students have been burdened by the current desegregation plan because they cannot be assigned to their neighborhood schools, which are resegregating.¹¹⁵ Chinese American parents argued that under the new system, their children were denied admittance to the public schools of their choice to make room for students from other racial groups.¹¹⁶ The policy relies on socioeconomic profiles to create a mix of students and also distinguishes between students living in the area surrounding the school and those who live in other neighborhoods.¹¹⁷ Since the system moves beyond the students from inside the attendance area once they can no longer further diversify the base profile of the school, students from a more racially-homogenous neighborhood will be bypassed in favor of stu-

111. *Id.* at 5.

112. *Id.*

113. *Id.* at 5-6.

114. Soo, *supra* note 7. Soo further notes that the Bayview-Hunters Point neighborhood, which was predominantly African American at the time when the monitoring team began its work, has now gained about equal numbers of Chinese Americans. *Id.*

115. Walsh, *supra* note 7.

116. *See id.*

117. *See* SFUSD, Education Placement, *supra* note 4.

dents from other areas whose individual profiles are more different than the base profile.¹¹⁸

It gives low-income, east-side kids, many of them black and Latino, a shot at high-performing schools in the Sunset and Richmond. Because those schools are popular and overcrowded, some local kids, most of them Chinese, get turned away and assigned to east-side schools that aren't as good as the ones in their own neighborhoods.¹¹⁹

For example, a number of local children, primarily Chinese, were turned away for the 2003-04 year from high-performing high schools in their Sunset and Richmond neighborhoods.¹²⁰ One parent, an immigrant from China who worked in San Francisco as a cook, argued that he had saved for years to buy a house in the Sunset and it "[made] no sense" for his daughter to ride public transit for two hours a day commuting to a high school far outside of their neighborhood, near Candlestick Park.¹²¹

As a result, a number of Chinese American parents asked, "Why are so many students who didn't get the schools they want Chinese?"¹²² Many saw themselves as "victims, not beneficiaries," of the various solutions implemented throughout the years to address black-white inequities.¹²³ A group of these parents clashed with the SFUSD's superintendent during the initial implementation of the diversity index plan and publicly declared their dissatisfaction with the system that sent their children out from the west-side of the city to schools in other neighborhoods.¹²⁴ The clash was bitter between both sides.¹²⁵

118. See *supra* note 90 and accompanying text (discussing students inside and outside the attendance area).

119. Walsh, *supra* note 7.

120. *Id.*

121. *Id.* Abraham Lincoln High School was located only blocks away from one protesting family's home, but their daughter was denied admittance to that choice and others on the western side of San Francisco. *Id.* Lincoln High School is filled with low-income and middle-class students, and considers itself a "comprehensive, nonelitist, take-all-comers school." Bernadette Tansey, *S.F. High School's Biotech Wizards Dazzle Collegians at National Meet*, S.F. CHRON., Nov. 17, 2007, at A1. Lincoln students have some prestigious opportunities available to them, including one through the University of California at San Francisco ("UCSF") which allowed a small team of high school students to compete in the international Genetically Engineered Machine competition, which was founded at the Massachusetts Institute of Technology. *Id.* The Lincoln students on the UCSF team competed with college students from Harvard, Princeton, and dozens of other elite universities, and was named as one of six finalist teams. *Id.* Such an opportunity is more common for students at elite private schools or the district's selective secondary school, Lowell. *Id.*

122. Walsh, *supra* note 7.

123. *Id.*

124. Soo, *supra* note 7.

Early on, Superintendent Ackerman updated the SFUSD on the effects of the initiative.¹²⁶ She noted that for the 2002–03 school year, 1284 students living in the Lincoln High School attendance area applied for 602 seats.¹²⁷ For that year, 434 of the neighborhood children were placed at Lincoln, along with 168 students from outside the attendance area.¹²⁸ The press release went on to state that “Chinese students [were] proportionally represented (44.5% placed [at Lincoln] versus 46.6% applying from the attendance area).”¹²⁹ However, the families were not protesting their children’s assignment to other schools due to too many applicants from their neighborhood—they were displeased with the number of seats assigned to the 168 students from outside the attendance area. Under the diversity index plan, students from outside the attendance area are only placed at a school if no other base profiles from inside the attendance area can contribute to the overall diversity of the site. The diversity index plan found enough similarities within the attendance area applicants to move into the pool of other applicants, which meant that some Chinese American applicants would have to travel greater distances to other schools across the city.

The current SFUSD website does not provide any statistics as to how many Chinese American students received a first choice placement or even placement among any of their listed choices. It does, however, proudly boast that “87% [of all students were] [a]ssigned to a [s]chool of [t]heir [c]hoice” for the 2007-08 academic year.¹³⁰ The district does not readily provide additional data by year as to how many Chinese American students preferred placement in a neighborhood school, but were placed in one of their lesser-preferred choices. The diversity index seems to disproportionately affect one ethnic group, the Chinese, much more than it affects other groups,¹³¹ when those students wish to attend their neighborhood schools on the west-

125. The parents allegedly “stormed” the superintendent’s office to protest the integration initiative, while the superintendent allegedly accused them of being “racists.” *Id.* The 2003 conflict illustrates the tension between a group of Chinese Americans and the SFUSD, which seemed to focus entirely on closing the achievement gap. It also illustrates the perception that Asian Americans do not have anything to complain about since we are already doing well—tying us back into the model minority myth.

126. Press Release, SFUSD, Superintendent Ackerman Updates Board on the Enrollment Process (Apr. 23, 2002), <http://portal.sfusd.edu/data/news/pdf/ACF395A.pdf>.

127. *Id.*

128. *Id.*

129. *Id.*

130. See SFUSD, Education Placement, *supra* note 4.

131. Walsh, *supra* note 7.

ern side of San Francisco where student achievement has been higher. Even if statistically they are not burdened by the initiative more than any other group, their perception that they are disproportionately burdened, and the district's refusal to acknowledge their concerns,¹³² is still troubling. While it is true that meaningful diversity cannot be achieved without affecting the various involved groups, it is one thing to focus primarily on integration of blacks and whites while other minorities experience change through collateral effects only. It is an entirely different matter to pursue integration while admitting other minorities as active participants in the process.

There is also an ongoing class issue:

What's always drawn fire is the part of the system that tries to steer kids from the more affluent west side to the city's less desirable, low-achieving schools. Yet every enrollment plan for the last 30 years has tried to do that, partly because there aren't enough good schools for everybody, and partly because schools that have at least some high-achieving kids are better than schools that don't have any.¹³³

Even those who agree about the potential of economic integration plans note that it can be incredibly difficult to optimally balance socioeconomic diversity, racial integration, and academic achievement.¹³⁴ The success of such programs in balancing those concerns may turn on "how aggressively a plan shifts students around and whether there are many schools that can lure middle-class students from their neighborhoods into poor ones."¹³⁵

Following the *Parents Involved* decision, which calls for the exhaustion of race-neutral options before implementing race-conscious mea-

132. The SFUSD press release reported that Superintendent Ackerman had guaranteed "[the] figures indicate that no group suffered unequal hardship with respect to the placement of students in their attendance area schools." Press Release, SFUSD, *supra* note 126, at 2. District reports or press releases that present statistical data without acknowledging the concerns of specific identity groups contribute to the lack of meaningful conversation about the issue. *See, e.g., id.* at 1–3. It is unfair to ask a group to contribute or sacrifice a benefit in order to work toward a societal benefit for all, but then act like it is not happening. The district's press release dismissed Chinese American parents' concerns, but then noted that it would attempt to open additional seats at the popular, over-subscribed schools. *Id.* at 2.

133. Walsh, *supra* note 7. For example, plenty of parents would like their children to have access to a school with cutting edge programs, such as the biotechnology program at Lincoln High School, but there is a limited number of available spots. *See* Tansey, *supra* note 121.

134. Jonathan D. Glater & Alan Finder, *Diversity Plans Based on Income Leave Some Schools Segregated*, N.Y. TIMES, July 15, 2007, at A24.

135. *Id.*

tures,¹³⁶ the SFUSD's school assignment system will be in the spotlight even more than before. Some commentators speculate that San Francisco's model, which currently does not use race as a means of achieving diversity, may be the model for other districts.¹³⁷ Economic integration plans are seen as a vehicle for racial diversity efforts, because "since income levels often correlate with race they can be an alternate and legal way to produce racial integration."¹³⁸ However, since it is questionable at best whether the SFUSD successfully achieves racial balancing without explicit use of race,¹³⁹ another interesting question following *Parents Involved* is whether San Francisco could move on to a more race-conscious plan in the future if it has adequately exhausted race-neutral measures.

III. Future Strategies for Chinese American Families in the San Francisco Unified School District

In the aftermath of the *Parents Involved* decision, Chinese Americans will begin to question whether their experiences within the SFUSD will change. Will litigation be a vehicle for social protest once again? If, in effect, the current SFUSD plan prevents some Chinese Americans from sending their children to the neighborhood schools of their choice, which would burden that group more than any other, it may impact the legitimacy of the diversity index plan. The Chinese American community of San Francisco has a long history of challenging public education policy and could do so again. There are inevitable tensions between the wants and needs of the Chinese American community, the San Francisco community as a whole, and the district. Litigation, however, is not the best vehicle for solving the previously discussed issues. Those issues can only be resolved if Chinese Americans work with other interest groups to push for school improvements across the district.

136. See notes 52–55 and accompanying text.

137. Glater & Finder, *supra* note 134 (noting that as many as forty districts around the United States have started to experiment with socioeconomic integration plans such as the one in place with SFUSD).

138. *Id.* (noting that achievement gains are often the result when poorer students are placed in schools with students who have high aspirations and parents with the time and resources to be more involved with their children and school activities).

139. See *id.* (noting that as popular schools have become less racially diverse, primarily gaining greater numbers of Asian American students, they have become more diverse in other ways).

A. Theoretical Principles: Asian American Critical Race Theory as the Lens for Reaction and Change

CRT, and specifically, AsianCrit, presents one approach to looking at the current issues in the SFUSD and evaluating possible reactions and changes. CRT is a body of legal scholarship based on the idea that traditional frameworks for the discussion of race and racial power in American legal culture and society are inadequate.¹⁴⁰ Since the mid-1970s,¹⁴¹ CRT has evolved from the basic insight that “racism is normal, not aberrant, in American society.”¹⁴² Scholarship through this lens depends on two themes: first, identifying and understanding how the dominance of white supremacy and the subordination of people of color was created in America, and how it continues to define social structures today;¹⁴³ and second, reacting to that understanding to change the current imbalance between the law and racial power.¹⁴⁴ Through CRT, scholars show that ingrained, subtle racism is effectively invisible to persons within a culture, and therefore cannot be adequately addressed within the formal legal framework.¹⁴⁵

CRT calls for understanding social institutions or problems through a “call to context,” arguing that while a formal legal framework may be adequate for some areas of the law, it is not appropriate for issues involving political and moral discourse.¹⁴⁶ Education, which is a highly emotional and individualized institution within any society, is one of those contexts in which a neutral framework is more of a hindrance than a vehicle for genuine social change. It is also a context in which, arguably, a formal legal approach has previously resulted in positive change, but has failed to address shifting contemporary issues such as the position of a racial minority in the role of demographic majority, as is the case in the SFUSD today. Public education is also a politicized topic—many politicians use school reform as a platform issue in almost every election campaign.

Since its inception, the CRT movement has grown to include sub-Crits, those CRT approaches that focus on the experiences of particular groups. AsianCrit grew out of the need for specialized CRT due to

140. CRENSHAW, *supra* note 21, at xiii.

141. CRITICAL RACE THEORY: THE CUTTING EDGE xiii (Richard Delgado ed., 1995) [hereinafter CRITICAL RACE THEORY].

142. *Id.* at xiv.

143. CRENSHAW, *supra* note 21, at xiii.

144. *Id.*

145. CRITICAL RACE THEORY, *supra* note 141, at xiv.

146. *Id.* at xv. The call for context often also requires a personalization of legal scholarship through narrative voice and other devices.

the unique nature of the discrimination suffered by Asian Americans.¹⁴⁷ AsianCrit proves insightful where the traditional legal frameworks fail to address the specific interests of Chinese Americans.

B. Historically, Marginalization of Chinese American K-12 Students in San Francisco Has Required the Group to Act on Its Own Through Litigation

Litigation is the traditional approach for a wronged identity or interest group that wants to change public policies. The history of education reform litigation brought by Chinese American families is long and complex, though it is seldom publicized or studied.¹⁴⁸ This lack of public acknowledgement is due in part to the predominant black-white binary in desegregation and integration dialogues,¹⁴⁹ which have focused on social change efforts following the civil rights movement in the 1960s. These efforts have traditionally focused on the experiences of African American children in public schools.¹⁵⁰ Further, the model minority myth has cloaked ongoing discrimination against Asian American students, which requires AsianCrit scholars and other advocates to publicize their struggles before even addressing possible solutions.¹⁵¹

The history of discrimination faced by Chinese Americans in public schools is long. Since large numbers of Chinese immigrants congregated in San Francisco, much of the relevant school discrimination occurred within that area.¹⁵² Strong anti-Chinese sentiment, especially between 1850–1930, led to local and state restrictions keeping Chinese students out of public schools.¹⁵³ Litigation then continued into the twentieth century. For example, in 1971, Chinese American families petitioned a United States district court for a stay that would allow their children to remain in neighborhood elementary schools, which

147. Chang, *supra* note 14, at 1247–48.

148. See Joyce Kuo, Comment, *Excluded, Segregated and Forgotten: A Historical View of the Discrimination of Chinese Americans in Public Schools*, 5 ASIAN L.J. 181 (1998); see also Caitlin M. Liu, Comment, *Beyond Black and White: Chinese Americans Challenge San Francisco's Desegregation Plan*, 5 ASIAN L.J. 341 (1998) (focusing on the *Ho* case, involving litigation with the SFUSD).

149. For a book treatment of Asian Americans interacting with the black-white binary, see Wu, *supra* note 15. See also CHANG, *supra* note 15, at 11–26. More focus on the education arena is included in Wu's book. See Wu, *supra* note 15, at 131–72.

150. See *supra* notes 24–26, 28, 32 and accompanying text (describing desegregation litigation brought by African Americans).

151. See Chang, *supra* note 14, at 1275.

152. Kuo, *supra* note 148, at 183.

153. *Id.*

had predominantly Chinese American students, rather than be re-assigned as part of San Francisco's desegregation efforts.¹⁵⁴ The parents argued in *Guey Heung Lee v. Johnson* that Chinese culture and language would be diluted or even lost if their children were dispersed from their neighborhood schools.¹⁵⁵ The Court denied the stay,¹⁵⁶ reminding the families that *Brown* "was not written for blacks alone. It rests on the Equal Protection Clause of the Fourteenth Amendment, one of the first beneficiaries of which were the Chinese people of San Francisco."¹⁵⁷ Thus, schools segregated by state action must be desegregated by state action, even if not requested by the students' parents.¹⁵⁸ This case is an example of litigation brought by Chinese American parents within the public education context. The case also illustrates how difficult it has been for Chinese Americans to find a place within the dialogue between blacks and whites. By bringing litigation, the families asserted their voice, which was imperative. However, it also set Chinese Americans apart from the larger community. They occupied a place separate from whites, who are often the dominant majority group, as well as from the position filled by other groups of color, who are traditionally accepted by society as disadvantaged minorities.

In the *Ho* case, Chinese American parents challenged the SFUSD court-ordered desegregation plan in place at the time, which limited Lowell High School¹⁵⁹ to no more than 40% student enrollment from any one race or ethnic group.¹⁶⁰ They argued that more stringent admissions requirements for their children, above the standards for any other group, including whites, in effect created a quota on Chinese American students.¹⁶¹

Litigation can help to send a clear message to the larger community on behalf of a specific group. Throughout the history of the United States, litigation has been a lever for change—for example, in *Brown* there was a clear mandate from the Court that our nation could

154. *Guey Heung Lee v. Johnson*, 404 U.S. 1215 (1971).

155. HYUNG-CHAN KIM, A LEGAL HISTORY OF ASIAN AMERICANS, 1790–1990, at 169 (1994).

156. 404 U.S. at 1218.

157. *Id.* at 1216; see also KIM, *supra* note 155, at 169.

158. KIM, *supra* note 155, at 169.

159. Lowell High School is widely regarded as the best public high school in the SFUSD. Admission to Lowell for most students is based on grades and standardized test scores. Fletcher, *supra* note 93, at A6.

160. *Ho v. S.F. Unified Sch. Dist.*, 965 F. Supp. 1316 (N.D. Cal. 1997); see also Fletcher, *supra* note 93, at A6.

161. 965 F. Supp. at 1319.

no longer tolerate school segregation based on race. However, litigation can also cause division and bitterness. For example, the larger community's reaction to the *Ho* litigation was quite negative.¹⁶²

C. Overview of Coalition Building as an Alternative to Litigation in Education Reform Efforts

One newer, less traditional option for identity groups is coalition building. The idea of coalition building to combat racism and racist institutions in the United States was prominent during the civil rights movement in the 1960s.¹⁶³ The leaders of the civil rights movement were blacks, but non-black allies were also involved.¹⁶⁴ The civil rights coalitions between blacks and their non-black allies are an early illustration of identity groups working together on a single cause, by engaging in collective action to achieve civil rights goals. Following that example, intellectual debate then began as to whether interracial coalitions could be effective in creating genuine social change.¹⁶⁵ Some CRT scholars have argued that social reform can only be achieved through meaningful participation by a variety of interest and identity groups in politics and public life.¹⁶⁶ That position appears to be the more optimistic one. Conversely, others have argued that true coalition building is impossible because separate interest or identity groups will only work together when their interests converge.¹⁶⁷ These scholars cautioned that within the context of the black civil rights movement, allies of blacks, specifically whites,¹⁶⁸ would jump ship once a conflict of interest arose to their detriment.¹⁶⁹ This idea be-

162. See Wu, *supra* note 15, at 141; Bill Ong Hing, *Asians Without Blacks and Latinos in San Francisco: Missed Lessons of the Common Good*, 27 AMERASIA J. 19, 26 (2001).

163. See Sheryll D. Cashin, *Shall We Overcome? Transcending Race, Class, and Ideology Through Interest Convergence*, 79 ST. JOHN'S L. REV. 253, 268 (2005).

164. *Id.*

165. *Id.* "The debate turned on whether blacks—a marginal, historically oppressed group—and whites—a dominant, historic oppressor—could realistically work together in a way that would truly benefit black people." *Id.* In some ways, the issue is whether minority groups can achieve optimized benefits from working with whites, as opposed to separating their efforts by group. Throughout history, those privileged to be in the majority have encouraged conflict amongst minority groups competing for limited benefits and resources. See Davis & Martínez, *supra* note 10, at 43.

166. Cashin, *supra* note 163, at 268.

167. *Id.* at 270–71.

168. Early discussion of coalition building was almost entirely centered on blacks and whites as the allies of blacks.

169. Cashin, *supra* note 163, at 270.

came interest-convergence theory.¹⁷⁰ Derrick A. Bell, Jr.'s classic article on interest convergence considers the remedies following the *Brown* decision and whether the interests of blacks and whites would converge enough to result in improved educational experiences and opportunities for black children.¹⁷¹

As the CRT movement has grown to include groups other than blacks, one contemporary issue is whether Asian Americans can and should participate in interracial coalition building, specifically in the context of public education issues. Since the older CRT materials are predominantly framed around the black-white binary, it is unclear how interest-convergence theory applies to Asian Americans.¹⁷² Even if the interests of blacks and whites converge in a particular context, the interests of an Asian American group might not always converge similarly. This issue is therefore a developing area in legal scholarship, and a very specific voice in the CRT movement.

It may be uncomfortable for some AsianCrit scholars to consider their role in coalition building, particularly relating to an issue as politically charged as public education, because of past exclusion from the table. But it is crucial that this specific voice be heard clearly. In the words of Bernice Johnson Reagon, "Coalition work is not done in your home. Coalition work is done in the streets. It is some of the most dangerous work you can do. And you shouldn't look for comfort."¹⁷³ Some proponents of AsianCrit have argued that despite the differences among various disempowered groups, the "commonality found in shared oppression" can bring these groups together to an understanding of each others' struggles and even create a path for a future together through coalition building.¹⁷⁴ On a practical level, there is shared oppression if multiple groups believe that the district's schools are not addressing students' needs adequately or are not pro-

170. See generally Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523 (1980).

171. *Id.* at 528–33.

172. *Id.* at 528. One scholar states that "Asian Americans have been involved in coalitions as long as we have been Asian Americans." Wu, *supra* note 15, at 330. While engagement in collective action on any front is a positive development, the author clarifies that this Comment focuses particularly on the possibility of coalition building in the area of K–12 public education.

173. Charles R. Lawrence III, *Who Are We? And Why Are We Here? Doing Critical Race Theory in Hard Times*, Foreword to *Crossroads, Directions, and a New Critical Race Theory* xvii (Francisco Valdes et al. eds., 2002) (noting the challenge of attempting to build coalitions while also seeking refuge from outside societal pressures, by quoting Bernice Johnson Reagon).

174. See Chang, *supra* note 14, at 1249.

viding the same high quality education across the district. Shared oppression can also be found generally in the experiences of people of color, and other identity groups, as minorities in American society. There is a commonality of experience as these groups navigate the system of social institutions and prejudices that still shape society today. Proponents of coalition building call for those resisting racism to look for links between systems of oppression rather than only focusing on the struggles of their own groups.¹⁷⁵

Others CRT scholars argue, however, that too much focus on coalition building with lessening emphasis on the distinct racial identities and race-related issues of a particular group dilutes any resulting benefits to each of the groups.¹⁷⁶ As CRT grows in scope and CRT scholars increase in number, it may become more difficult for CRT to validate and address the needs of all groups at the same time.¹⁷⁷

IV. Factors Affecting Whether Coalition Building for Chinese Americans is Possible in the Context of Voluntary Integration in SFUSD

Particularly within the context of education, success of integration measures depends in part on minimizing or even avoiding divergent racial interests.¹⁷⁸ This Comment goes on to suggest that coalition building is a viable strategy for Chinese Americans who are concerned about their place in the SFUSD, even given the current diversity index. The interests of the Chinese American community do converge with the interests of other groups in San Francisco. Even if the groups' interests do not always converge, the future of the district depends on principles that require coalition building rather than divergence.

175. JUAN F. PEREA ET AL., *RACE AND RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA* 1220 (2d ed. 2007) (discussing the ideas of CRT scholar Mari Matsuda).

176. See Lin, *supra* note 13, at 218. See generally *id.* for more about the benefits of identity-based organizing. For examples of Asian Americans engaging in coalition building in various contexts, refer to Wu, *supra* note 15, at 330–36.

177. See Lawrence, *supra* note 173, at xvii.

178. See Bell, *supra* note 170, at 528.

A. Exclusion of Asian Americans From Education Reform Conversations

For a number of reasons, including use of the traditional black-white binary in discussion of desegregation/integration issues¹⁷⁹ and the continuing perpetuation of the model minority myth, Asian Americans are often marginalized or excluded from conversations on public education reform. Bell, for example, only considered the convergence of black and white students' interests in his discussion of school integration.¹⁸⁰ In the California Bay Area, where Asian Americans are the largest minority group,¹⁸¹ it is imperative that the district go beyond looking at blacks and whites as interested groups.

In the context of education, the media has often portrayed Asian Americans as the model minority. This reputation has often kept Asian Americans from larger discussions of integration and diversity, for a few reasons. First, Asian Americans ourselves may be less likely to participate in a discussion about voluntary integration, because of a false sense of security within the group.¹⁸² More significantly, few outside the group believe that Asian Americans ever face discrimination or disadvantage in the education arena—instead, “Asian-Americans are more likely to be greeted with hostile cries that there are already ‘too many Asians.’”¹⁸³ Further, “The portrayal of Asian Americans as successful permits the general public, government officials,

179. Recent commentary on the black-white binary in AsianCrit suggests that the approach might provide value in coalition building. Janine Young Kim, *Are Asians Black?: The Asian American Civil Rights Agenda and the Contemporary Significance of the Black/White Paradigm*, in *BLACKS AND ASIANS: CROSSINGS, CONFLICT AND COMMONALITY* 178–80 (Hazel M. McFerson ed., 2006). Kim goes on to describe “six dimensions of the black/white paradigm,” which she uses to show its potential for use in conversations about Asian Americans and race. *Id.* at 180–92. The concept may be especially insightful in descriptions of how Asian Americans share interests with other groups of color who are not white, since all are subject to the race hierarchy. *See id.* at 192. I believe that Kim’s analysis of the black-white binary has merit, but I have treated the black-white binary as a limited approach in this Comment because the context of education has arguably formed around early litigation focusing on African Americans and the need for desegregation.

180. Bell, *supra* note 170, at 528.

181. Hua, *supra* note 15 (noting that in 2005, Asians represented over one fifth of the population in the Bay Area). The Chinese and Filipino groups currently comprise more than half of California’s Asian American population. *Id.*

182. Wu, *supra* note 15, at 77 (“Some Asian Americans already are either optimistic or naïve in believing parts of [the model minority myth].”); Chang, *supra* note 14, at 1260 (“[T]he myth has gained a substantial following, both inside and outside the Asian American community.”).

183. Dong, *supra* note 5, at 1028–29.

and the judiciary to ignore or marginalize the contemporary needs of Asian Americans.”¹⁸⁴

Even on a personal level, there are perceptions that the Asian group as a whole is advantaged and should not complain about integration measures that inconvenience them. For example, one African American senior at Thurgood Marshall High School explained, “It has to do with the parenting and the neighborhoods A lot of the Asians are living middle class lives. They go home and have support. But other kids go back home and don’t have anything.”¹⁸⁵

The model minority myth creates the perception that Asian Americans do not have anything meaningful to contribute to a discussion on urban school reform, which leads to diminished power among minority groups. As “[p]ower imbalances are most threatening to viable collaboration when not addressed,”¹⁸⁶ exclusion from the dialogue is a barrier to meaningful collaboration between Chinese Americans and other San Francisco identity groups on this issue. However, concluding that coalition building is not a worthy goal would be to shortchange all of the groups involved. One strategy to address the power imbalance is to delegate different aspects of a coalition project to separate groups, calling upon them to highlight their strengths and contribute uniquely to the shared goal.¹⁸⁷ In this way, Chinese Americans would be less excluded from a multi-group effort to improve SFUSD schools to the benefit of all district students.

B. At First Glance, Chinese American Students Appear to Have Divergent Interests From Other Groups

As discussed above,¹⁸⁸ the current diversity index plan implemented by the SFUSD has had a detrimental impact on some Chinese American students and their families. Their experience is arguably unique among all of the identity groups in the district, including white students. Whites are less, if at all, affected by the diversity index, because they are less likely to live in concentrated numbers, specifically west-side San Francisco neighborhoods, where many of the popular public schools are located. Due to the numbers of Chinese

184. CHANG, *supra* note 15, at 53.

185. Gelles, *supra* note 58.

186. Sandra J. Bell & Mary J. Delaney, *Collaborating Across Difference: From Theory and Rhetoric to the Hard Reality of Building Coalitions*, in *FORGING RADICAL ALLIANCES ACROSS DIFFERENCE: COALITION POLITICS FOR THE NEW MILLENNIUM*, *supra* note 8, at 63, 73.

187. *Id.*

188. See *supra* notes 119–25 and accompanying text (describing the experiences of some Chinese American families in the SFUSD following the diversity index plan).

Americans in the district, making them the majority group in a role typically filled by white students, whites may benefit from the diversity index plan. In other school districts, white students in the majority would likely make similar arguments that voluntary integration prevents them from getting into the more popular schools. This is a unique systemic issue forced on the SFUSD by its demographics.

Though the current school assignment plan expressly does not consider race,¹⁸⁹ the way in which students applying for slots are grouped according to geographic attendance area¹⁹⁰ in relation to the school could in effect make it easier for a white student to attain a slot at the desired school than it would be for a Chinese American student to be offered the slot. Another reason why white students may more easily obtain a slot at a desired school is the consideration of the student's home language in determining his or her individual profile.¹⁹¹ Each individual profile is compared against the school's base profile when determining how much that student could personally contribute to overall diversity.¹⁹² Chinese American students, particularly those whose parents are immigrants, are likely to speak Chinese in the home. In a neighborhood such as the Sunset, in which resides a high concentration of such Chinese families,¹⁹³ the base profile of the neighborhood school will be saturated with students who speak another language in the home. As such, if the diversity index factors are applied, a white student from the same neighborhood, who is much less likely to speak another language at home, would be considered more helpful to achieving diversity at the school and would receive that slot sooner. The idea that white students could be placed at desirable schools over Chinese Americans, a marginalized group which has suffered oppression in this country, is counterintuitive.¹⁹⁴

It would be in the interest of some west-side Chinese American students and their families to work toward a SFUSD that does not dis-

189. See *supra* note 76 and accompanying text (noting the district's race-neutral school assignment plan).

190. See *supra* note 90 and accompanying text (discussing attendance areas).

191. SFUSD, Education Placement, *supra* note 4.

192. *Id.*; see *supra* notes 88–92 and accompanying text.

193. For a map of San Francisco's precincts, based on race and political ideology, see Rich DeLeon, Study #1: Measuring and Mapping Racial Diversity in San Francisco Precincts (Working Paper, July 15, 2003), available at http://www.sfusualsuspects.com/DeLeon%20March%2004/DeLeon_RacialDiversityStudy.pdf.

194. It seems contrary to the spirit of desegregation that a white student would possibly benefit more from a diversity plan than would a student of color. See Hing, *supra* note 162, at 26 (considering the possibility of lower admissions standards at Lowell High School for white students than Asian American students).

proportionately prevent them from assignment to the high-performing schools in their own neighborhood. The predominant interest for that particular group would be to have their children attend the higher-performing public schools that are located in their neighborhood. The wrinkle in the SFUSD is that geographically, there are increasing numbers of Chinese Americans in the district as a whole, and those numbers are more likely to be concentrated in areas of the city containing the popular school choices, like the Sunset and Richmond districts. Further, the west-side Chinese American families' desire for neighborhood schools does not converge neatly with other identity groups' interest in having their children attend the best schools possible, no matter where in the San Francisco district those schools are located. Lastly, in a neighborhood with different demographics, adding Asian American students to the school is not necessarily a welcome change or harbinger of greater educational attainment for all.¹⁹⁵

All of the interests listed above are certainly valid concerns held by some SFUSD families. However, it is possible that those surface interests hide a more pernicious issue: that the *Ho* litigation was used by opponents of affirmative action to promote their message.¹⁹⁶ "Courts have repeatedly allowed Asian-Americans to serve as a buffer between Whites and Blacks or Latinos during conflicts over race-conscious remedies due to misperceptions about the status of Asian Americans as a 'model minority.'" ¹⁹⁷ Rather than being used for the furtherance of other groups' interests, Asian Americans should reach out to those others and collaborate with them to fight the traditional structures promoting disparities. While Chinese American families simply wanted to protect their children, anti-affirmative action groups used the litigation to fan model minority resentment and focus other groups on Asian Americans, rather than on mainstream societal institutions that perpetuate a lack of diversity in our nation's public schools.¹⁹⁸ Given this concern, then, one significant Chinese Ameri-

195. See Gelles, *supra* note 58 (discussing the belief of African American students that Thurgood Marshall High School has changed due to increased numbers of Asian American students at the school).

196. Hing, *supra* note 162, at 23.

197. Gitanjali S. Gutierrez, Note, *Taking Account of Another Race: Reframing Asian American Challenges to Race-Conscious Admissions in Public Schools*, 86 CORNELL L. REV. 1283, 1318 (2001).

198. Hing, *supra* note 162, at 23. Divisiveness among minority groups distracts from the collaboration on shared goals, and is a compelling reason why the "oppression olympics" must no longer be played. For more discussion on this topic, see Davis & Martínez, *supra* note 10, at 43.

can interest would be to work with other groups to create more goodwill and to fight the proponents of a color-blind society who are led by Chief Justice Roberts through his opinion in *Parents Involved*.¹⁹⁹

C. Greater Human Interests at Stake Call for Coalition Building Rather Than Divisive Litigation

Interest-convergence theory within the arena of public education is complex and difficult, particularly when the interests of particular groups seem to be at odds. Other groups may be unfamiliar with or even distrustful of an Asian American role in coalition building toward a social goal.²⁰⁰ One commentator noted that “[t]he challenge to multicultural educators, in both theory and practice, is how to increase equity for a particular marginalized group without further limiting the opportunities of another such group.”²⁰¹ Though groups often share needs and goals, they might nevertheless “perceive their needs as divergent, conflicting, and inconsistent.”²⁰² Regardless of those uncomfortable feelings, it is important that Asian Americans engage in coalition building,²⁰³ especially in the area of public education. It has been suggested that proponents of multicultural education should “help students who are members of particular marginalized groups [to] better understand how their fates are tied to those of other powerless groups and the significant benefits that can result from multicultural political coalitions.”²⁰⁴ Only in this way can different identity groups look past their particular interests and successfully come together in coalition work.²⁰⁵

In order to encourage such coalition building, however, there must be an examination of the many interests that motivate groups to

199. *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 127 S. Ct. 2738, 2746–68 (2007).

200. See Elaine H. Kim, *At Least You're Not Black: Asian Americans in U.S. Race Relations*, in *BLACKS AND ASIANS: CROSSINGS, CONFLICT AND COMMONALITY*, *supra* note 179, at 210 (noting that “[s]ome Asian American activists feel that other people of color do not respect and trust Asians in coalition work and that other people of color have a difficult time accepting the idea of Asian American leadership”).

201. James A. Banks, *Multicultural Education: Characteristics and Goals*, in *MULTICULTURAL EDUCATION: ISSUES AND PERSPECTIVES* 7 (James A. Banks & Cherry A. McGee Banks eds., 4th ed. 2001).

202. *Id.*

203. Kim, *supra* note 200, at 212 (calling on Asian Americans to break out of our role as “honorary whites, honorary blacks, or a wedge between the two”).

204. Banks, *supra* note 201, at 7.

205. Davis & Martínez, *supra* note 10, at 44–46.

participate. Humanism²⁰⁶ may provide some guidance in such an examination. Humanists are “committed to treating each person as having inherent worth and dignity,”²⁰⁷ without losing sight of the “well being of all, . . . diversity, and respect [for] those of differing yet humane views.”²⁰⁸ In the humanist worldview, the ideals and interests of society as a whole can never be forgotten even when individuals’ rights are considered. This approach is similar to one of the basic tenets of the multicultural education movement, which assumes that all individuals are cultural and live in a multicultural society, including those who represent the traditional mainstream culture.²⁰⁹ The principles behind multicultural education suppose that all individuals have an interest in acquiring an understanding of differing cultures, in order to fully function in a complex modern society.²¹⁰ Conversely, schools which are “resegregated”²¹¹ are viewed as negatively impacting the culture of the community.²¹²

In San Francisco, the achievement gap between white and Asian students, and black and Latino students, is the highest in the state.²¹³ This achievement gap must absolutely be addressed. The future success and well-being of today’s children is too reliant on receiving a quality public education to allow a community to be distracted by one identity group’s perceived slights to the benefit of another. Interest groups must work together on shared issues such as increased school funding, updated facilities, innovative curricula, and greater teacher

206. Humanism is a system of progressive philosophy that emphasizes working toward the greater good of society. See generally AM. HUMANIST ASS’N, HUMANIST MANIFESTO III (2003), available at <http://www.americanhumanist.org/3/HumanismandItsAspirations.pdf>; see also KLUGER, *supra* note 25, at Foreword (“Of the ideals that animated the American nation at its beginning, none was more radiant or honored than the inherent equality of mankind. There was dignity in all human[s], Americans proclaimed, and all must have its chance to strive and to excel.”).

207. AM. HUMANIST ASS’N, *supra* note 206, at 2.

208. *Id.*

209. Frederick Erickson, *Culture in Society and in Educational Practices*, in MULTICULTURAL EDUCATION: ISSUES AND PERSPECTIVES, *supra* note 201, at 31. “Every person and social group possesses and uses culture as a tool for the conduct of human activity.” *Id.* at 33.

210. *Id.*

211. In this Comment, “resegregation” includes reference to schools that have increasing numbers of Chinese American students despite the diversity index plan, but that have not done so pursuant to state action. But see *supra* notes 48–51 and accompanying text (indicating that the plurality in *Parents Involved* constructs “segregation” more narrowly).

212. See Final Supplemental Report, *supra* note 102, at 5; see also Bob Egelko & Heather Knight, *Justices Take Cases on Race-Based Enrollment; But Prop. 209 Means California Schools Likely to be Unaffected*, S.F. CHRON., June 6, 2006, at B1. The article quotes a school board member who states, “Racial segregation is bad for the education of all children.” *Id.*

213. Gelles, *supra* note 58.

retention, rather than compete for limited resources among themselves. The time of the "oppression olympics,"²¹⁴ which considers the distribution of limited social and economic resources among a diverse array of deserving groups, has passed. To create further divisiveness through litigation of the interests of one group would run counter to efforts addressing the achievement gap. Quite simply, "more effective action or change can be accomplished through collaborative efforts."²¹⁵

One Asian American commentator has argued strongly that all groups, even Chinese Americans who want their children to attend their top choice high schools, must sacrifice for the goal of "racial harmony and equality" for all.²¹⁶ The basis of this goal comes from "religion, moral philosophy, and basic concepts of humanity."²¹⁷ Similarly, "Asian Americans [must] set an example of commitment to a fairness that rejects narrow self-interest in favor of a community of justice."²¹⁸

While the *Ho* litigation was understandable given the immediate interests of Chinese parents in fighting what they perceived to be a clear injustice, the litigation actually led to less diversity in the district's more popular schools.²¹⁹ Bill Ong Hing, a commentator and SFUSD parent himself, views the repercussions of *Ho* as too "expensive."²²⁰ He argues that the relative success of the *Ho* lawsuit cost the San Francisco community too much as a whole, because it fostered "[a]n environment without diversity" and led to a "significant loss of goodwill with other groups of color."²²¹ Instead, the group could have framed their litigation to focus on educational equality for all students

214. Davis & Martínez, *supra* note 10, at 43 (calling for the end of a hierarchy of oppression, also known as the "oppression olympics").

215. Bell & Delaney, *supra* note 186, at 65. Bell and Delaney do note, however, that there is a certain degree of ambiguity attached to the idea of what is "more effective." See *id.* They go on to suggest that collaboration is a trend in academia, and thus grant money and political recognition are often attached contingently to the idea of group collaborations. *Id.*

216. Hing, *supra* note 162, at 22. Though it is difficult, minority groups must reject the idea of "making a hierarchy of demands" by claiming that their own interests are more compelling or deserving than other groups' needs. Davis & Martínez, *supra* note 10, at 43.

217. *Id.*

218. Kim, *supra* note 200, at 213.

219. See Hing, *supra* note 162, at 23-25.

220. *Id.* at 25.

221. *Id.*

in the SFUSD, instead of focusing only on its own interests.²²² To do so would have promoted a more humanistic approach, while also potentially improving public perceptions of the group. This sentiment was echoed by amici curiae in *Parents Involved*.²²³ A number of Asian American legal organizations²²⁴ urged the Court to uphold the constitutionality of the districts' voluntary integration programs, emphasizing that racial diversity in schools is a compelling government interest.²²⁵ Amici specifically noted the beneficial role of racial diversity in combating prejudice and discrimination in K-12 schools.²²⁶ These groups also noted that the situation challenged in *Parents Involved* was distinguishable from the premise in *Ho*, because the Seattle and Jefferson County programs did not rely on competitive admissions, whereas Lowell High School in the SFUSD did.²²⁷ Since that issue in *Ho* was not a concern in *Parents Involved*, the idea that all schools are improved by decreased segregation and decreased "racial isolation"²²⁸ should be given even more weight.²²⁹

Not all commentators, however, would agree with Bill Ong Hing's call for a more humanistic approach. The Asian American Legal Foundation ("AALF") supported the *Parents Involved* petitioner families who challenged the districts' race-conscious voluntary integration plans.²³⁰ There is clearly a divide of opinion even within the national Asian American community. AALF's amicus curiae brief specifically noted its concern that upholding the plans would lead to renewed discrimination against Chinese American students in the SFUSD, similar to the type that was challenged in the *Ho* case.²³¹ The AALF gave

222. Gutierrez, *supra* note 197, at 1329. Admittedly, it would have been difficult to develop a more inclusive litigation strategy without losing the premise of the Chinese American families' lawsuit.

223. Brief for the Asian American Justice Center et al. as Amici Curiae Supporting Respondents, *supra* note 16.

224. Amici included the "largest and oldest Asian American organizations in this country that are involved in challenging racial discrimination, safeguarding civil rights, and advocating for affirmative action programs." *Id.* at 1.

225. *Id.* at 2-3.

226. *Id.*

227. *Id.* at 25-26.

228. *Id.* at 14.

229. *Id.* at 24-28.

230. Brief for the Asian American Legal Foundation as Amici Curiae Supporting Petitioners, *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No 1*, 127 S. Ct. 2738 (Nos. 05-908, 05-915). The AALF, based in San Francisco, California, is an organization founded to protect and promote the civil rights of Asian Americans. *Id.* at 1 n.1.

231. *Id.* at 6.

several reasons²³² why the use of race in the challenged plans was unacceptable and warned that a holding for respondents-school districts would again place the heaviest burden on Chinese American students in the SFUSD, returning to a situation similar to the pre-*Ho* racial caps.²³³ While theirs are certainly important concerns, the AALF position emphasizes the imposition on some Chinese American students over the other effects, whether positive or negative, of voluntary integration in the district.

V. Conclusion

In many ways, education is extremely individualized. "Almost any parent, given unequal schools and given the ability . . . to choose between them, will choose the good one for his or her children."²³⁴ No parent wants to make concessions in regard to his or her own child's education, just as no individual would enjoy prioritizing another's needs over his or her own. Regardless of our individual interests, however, we must all make an effort to consider the shared goals of the larger community. Since Asian Americans face various types of racial discrimination in American society, the group has overlapping interests with other groups of color. We also share a universal interest in diversity and humanistic ideals. Coalition building, not litigation, is how a community should seek positive change. On the surface, litigation may seem like the answer, since it often provides short-term relief, as it did for Chinese American litigants in *Ho*. Litigation, however, is divisive, even though it may be effective in achieving change for individuals or small, specific groups.

After the *Parents Involved* decision limited school districts' options for addressing race issues through voluntary integration, whole communities must agree that diversity is the foremost goal. Such consensus must be reached in order to broaden the range of creative means for integration that meet the United States Supreme Court's narrower range for constitutionality. Some commentators fear that the *Parents*

232. The AALF amicus brief asserts that even lofty goals do not justify the use of a racial balancing scheme. *Id.* at 20. AALF also argues that denying placement at a school because the child's race is "overrepresented" and placing the child at a comparable site is not feasible, simply because there is a "wide range of desirability." *Id.* at 22-23. This last argument is particularly relevant for Chinese American families in SFUSD who assert that the west-side schools in their neighborhoods are more desirable than other options.

233. *Id.* at 10-11.

234. WALTER BENN MICHAELS, *THE TROUBLE WITH DIVERSITY: HOW WE LEARNED TO LOVE IDENTITY AND IGNORE INEQUALITY* 135 (2006); see also Ryan, *supra* note 41, at 155 (noting the difficulty of convincing parents and citizens to accept integration).

Involved holding will pressure more school districts to move away from voluntary integration efforts—an unacceptable result. Achieving diversity in our public schools will help to develop an improved world for all, and that aim should be accomplished through collective action rather than through more divisive efforts. In San Francisco, Chinese Americans must actively engage in that type of coalition building.

